

**REMARKS**

Claims 1-5, 8-18, and 65-70 are pending in the Application. Claims 1-5, 8-11, 13-18, and 65-70 of the Application stand rejected under 35 U.S.C. § 103(a) as being obvious over Szlam et al. (U.S. Patent Application No. US 2002/0047859) (hereinafter “Szlam”) in view of Bednarek et al. (U.S.P.N. 6,965,868) (hereinafter “Bednarek”). Claim 12 stands rejected under § 103(a) as obvious over Szlam in view of Bednarek and further in view of England (U.S.P.N. 6,144,991) (hereinafter “England”). In light of the Remarks, the Applicant respectfully traverses the rejections and requests reconsideration and allowance of the pending claims.

**Rejections under 35 U.S.C. § 103(a)**

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference(s) or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991); M.P.E.P. § 2143.

The Supreme Court recently reaffirmed use of the *Graham* factors for determining obviousness under 35 U.S.C. § 103(a). *KSR Int'l Co. v. Teleflex, Inc. (KSR)*, No 04-1350 (U.S. Apr. 30, 2007). The four factual inquiries under *Graham* require examination of: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims in issue; (3) the level of ordinary skill in the pertinent art; and (4) the objective evidence of secondary consideration. *Graham v. John Deere (Graham)*, 383 U.S. 1, 17-18, 149 USPQ 459, 467 (1966); 35 U.S.C. § 103.

In *KSR*, the Supreme Court recognized that the requirement for a teaching, suggestion, or motivation to modify or combine the references and arrive at the claimed invention provides a helpful insight for determining whether the claimed subject matter is obvious under 35 U.S.C. § 103(a). *KSR* at 14, 15. In addition, the Court maintained that any analysis supporting a rejection

under 35 U.S.C. § 103(a) should be made explicit, and that it is “important to identify reasons that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed, because “inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” *Id.*

### **Independent Claim 1**

Claim 1 recites a method for matching a customer with a particular sales associate for sales opportunities, and is rejected over a primary reference to Szlam.

Szlam discloses a website help method that monitors factors indicative of a customer having problems using a company’s website, where the factors include the time a customer spends on a web page, errors in forms submitted on the company’s website, and the number of times a webpage is repeatedly viewed. Szlam at [0012], [0059], [0062], [0064]. Based on these factors, Szlam connects a customer who needs help using the company’s website to any CSR who is available, and uses phrases such as “determines whether a CSR is currently available”, “connects the customer directly with an available CSR”, and “a determination has already been made that a CSR is available.” Szlam at [0010], [0011], [0012], [0073], Fig. 7 at 705, 715. Szlam only discloses two types of CSRs – those who are available and those who are not available, and does not differentiate between CSRs who are available. Similarly, paragraph [0085] of Szlam discloses that VIP customers receive browsing assistance “more quickly” than regular customers, but does not differentiate between the CSRs that are providing assistance. Szlam at [0013], [0047], [0085].

Claim 1 recites in relevant part:

A method for selling goods and services in conjunction with the Internet, comprising:

...

matching the customer with a sales associate from among a plurality of sales associates based on the session information, the customer information, and information about the plurality of sales associates, the sales associates being independent from the plurality of enterprises;

To support a rejection of claim 1, the Office Action states in relevant part:

As per claims 1 and 65-70, Szlam discloses a method for selling goods and services in conjunction with the Internet (0003) comprising:

...

matching the customer with the sales associate, the sales associate being independent from the plurality of enterprises (Fig. 7; [0073]-[0074]);

Paragraph [0073] of Szlam discloses:

[0073] FIG. 7 illustrates the process of providing assistance once it has been determined that it is appropriate to provide assistance. Step 700 determines whether assistance should be provided, such as by using one or more of the methods described above. Assuming that a decision has been made that the customer requires assistance, step 705 determines whether a CSR is currently available. If a CSR is currently available then, at step 710, the company web server inserts a HELP option in the current page, sends a new web page with a HELP option, or updates the current web page but adds a HELP option. A HELP option may be a HELP button, or may be a HELP screen which connects the customer directly with an available CSR. A HELP button may be a "button", a key, an icon, a symbol, a word, a combination of words, a field, a sound or video clip, a multi-media presentation, or any desired combination thereof, so long as it indicates to the customer that the customer should take some action to obtain assistance. In one embodiment the HELP button provides a hyperlink to a predetermined web site address at the company server. The customer can then press or click on the HELP button to be connected on screen with the CSR, or the customer can begin typing a message on screen to the CSR. The customer is therefore immediately and directly connected to a CSR. This can happen because, prior to offering assistance to the customer, a determination has already been made that a CSR is available, predicted to be available, or will be available by the time that the customer responds. (Emphasis added).

Paragraph [0074] of Szlam discloses:

[0074] The HELP screen presented at step 710 to the customer preferably includes a short explanatory or greeting message. For example, the HELP screen may present the message: "We have noticed that you have been at this same web page for some time. Do you require assistance? If so, please type in your question or the problem you are having and you will be immediately be connected on-screen with a Customer Service Representative." Or the screen may present the message: "We have noticed that you have returned to this same web page several times. Do you require assistance? If so, please type in your question or the problem you are having and you will be immediately be connected on-screen with a Customer Service Representative." The HELP option may be a video or audio clip to which the customer may respond orally or by clicking in an appropriate place. The help screen may address the customer by name through the use of the information stored on cookies or at the company server. These messages are exemplary and other appropriate messages may be used that may be based on the contact strategy or marketing campaign associated with the web page. Also, the HELP screen may be a completely new screen, or may be the existing web page with a HELP section superimposed, such as on the bottom third of the web page. (Emphasis added).

As seen above, the cited language from Szlam discloses connecting a customer with an available customer service representative for the purpose of providing help using a website: "Assuming that a decision has been made that the customer requires assistance, step 705 determines whether a CSR is currently available." The Applicant respectfully asserts that connecting an available CSR to a customer who is having problems using a website, as disclosed by Szlam, clearly does not teach or disclose matching a customer with a sales associate based on session information comprising the products the customer is searching, customer information, and information about the plurality of sales associates, as recited in claim 1.

Accordingly, in view of the discussion above, the Applicant traverses the rejection of claim 1 for at least the reason that Szlam does not teach or disclose matching the customer with a sales associate from among a plurality of sales associates based on the session information, the customer information, and information about the plurality of sales associates, as recited in claim 1.

**Dependent Claim 3**

To support a rejection of claim 3, the Office Action states:

As per claim 3, Szlam discloses that customer information is received from a third party ((0014) – use of cookies to collect profile information, i.e. demographics, etc.).

The cited language from Szlam discloses:

[0014] The present invention may determine that a customer needs assistance through the use of cookies. A cookie is embedded in a web page so that when the web page is accessed by a customer for the first time, a cookie is sent to the customer's device. Then, when the customer accesses the web site in the future, the cookie is sent to the web host. Whenever predetermined web pages are opened by the customer, the cookie notifies the server of the identity of the customer. Further, the cookies may hold additional information about the customer including, for example, part or even all of the customer profile. This method is beneficial in that it frees up space on the company server as the customer profiles are maintained by the customers in cookies on their own devices or computers, not on the company server. Further, the use of cookies can be expeditious in that the company web server need not access another company server (perhaps geographically remote from the company web server) to obtain the customer information. (Emphasis added).

The above-cited language from Szlam discloses storing customer information in the form of cookies residing on the customer's computer. Szlam emphasizes that storing information in cookies is good because "the company web server need not access another company server to obtain the customer information."

Claim 3, in contrast to storing information on a customer's computer, as disclosed above, recites the method of claim 1 wherein the customer information is received from a third party. Accordingly, the Applicant traverses the rejection of claim 3 for at least the reason that storing information in cookies on a customer's computer clearly does not teach or disclose receiving customer information from a third party, as recited in claim 3. Szlam in fact teaches away from

receiving information from a third party. Claim 3 is also allowable for at least the reason that it depends from allowable claim 1.

**Dependent Claim 4**

To support a rejection of claim 4, the Office Action states:

As per claim 4, Szlam discloses that the session information is parsed (Figs. 1-7) and that the agent provided can be determined by rules so that the best available agent is provided [0085]. However, neither Szlam nor Bednarek explicitly discloses that this segmentation is in accordance with product accreditation achieved by sales associates or that each sales associate is present with different types of sales opportunity depending on the product accreditation.

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have parsed the session information in accordance with product accreditations and presented the sales associate with the appropriate type of sales opportunity depending upon the product accreditation, i.e. the best fit, as taught in Szlam and Bednarek because it provides the enterprise with the best utilization of its resources, provides the customer with the most knowledgeable sales representative and increases the likelihood of a sale through customer satisfaction. Such best fit routing, funneling, is well-known in the call center art. (Emphasis added)

Claim 4 recites:

The method of claim 1, wherein the session information is parsed and segmented in accordance with product accreditations achieved by sales associates, whereby each sales associate is presented with different types of sales opportunities depending on the product accreditation of the sales associate.

In view of the above, the Applicant respectfully asserts that claim 4 is allowable for several reasons. First, Szlam does not disclose “that the session information is parsed (Figs. 1-7) and that the agent provided can be determined by rules so that the best available agent is provided [0085]” as asserted in the Office Action. Specifically, Szlam at Figs. 1-7 does not disclose parsing session information as recited in claim 1, but rather discloses determining if a

customer needs assistance browsing a website by monitoring factors such as the number of times a customer has been to a webpage (Fig. 5). Accordingly, claim 4 is allowable over Szlam.

Second, assuming arguendo that “Szlam discloses that the session information is parsed (Figs. 1-7) and that the agent provided can be determined by rules so that the best available agent is provided [0085]”, claim 4 is still allowable because neither Szlam nor Bednarek “explicitly discloses that this segmentation is in accordance with product accreditation achieved by sales associates or that each sales associate is present with different types of sales opportunity depending on the product accreditation” as stated in the Office Action. Accordingly, the Applicant respectfully asserts that claim 4 is allowable because the cited references do not disclose every element of claim 4, and because claim 4 depends from allowable claim 1.

### **Dependent Claims 8-11**

Claims 8-10 are rejected as obvious over Szlam in view of Bednarek. With regard to claims 8-10, the Office Action states:

As per claims 8-10, Szlam discloses facilitating bridging out from Internet communication between the customer and sales associate to another mode of communication between the customer and sales associate ([0010] – CSR may communicate with the customer via various media including, but not limited to, electronic chat, e-mail, multi-media/presentation form exchanges, voice over Internet Protocol (VoIP), voice over Public Switched Telephone Network (PSTN) and fax).

Claim 8, which depends from claim 1, recites:

The method of claim 1, further comprising facilitating bridging out from Internet communication between the customer and sales associate to another mode of communication between the customer and sales associate.

Szlam at paragraph 10 discloses:

[0010] The present invention provides for connecting a customer to a CSR when the customer presses a HELP button, especially when the customer should be offered assistance and when the company can offer assistance. The CSR may communicate with

the customer via various media including, but not limited to, electronic chat, e-mail, multi-media/presentation form exchanges, voice over Internet Protocol (VoIP), voice over Public Switched Telephone Network (PSTN) and fax.

Paragraph 10 of Szlam discloses a CSR communicating with a customer using one of various methods, such as e-mail or fax. In contrast, claim 8 recites bridging out from an Internet connection between the customer and sales associate to another mode of communication. In other words, claim 8 recites a sales associate communicating with a customer over the Internet, and then changing or bridging out to a different mode of communication. Thus, the Applicant asserts that claim 8 is allowable for at least the reason that Szlam does not teach or disclose bridging out from Internet communication to another mode of communication as recited in claim 8. Claim 8 is allowable for at least the reason that it depends from allowable claim 1. Claims 9-11 depend from claim 8 and so are allowable for at least the reason that each depends from claim 8.

### **Dependent Claim 12**

To support a rejection of claim 12 as obvious, the Office Action relies on Szlam, Bednarek, and England. To this end, the Office Action states:

As per claim 12, Szlam does not explicitly disclose that the sales associate has the capability to manipulate the customer's navigation of the Internet. Bednarek discloses that the agent may create and edit web form, embed controls into sub web-based forms or pages to provide certain customer interaction mechanism in addition to having a fully functional navigation tool at his disposal, i.e. the agent can manipulate the client's computer over the Internet.

The Applicant respectfully disagrees that Bednarek discloses “that the agent may create and edit web form, embed controls into sub web-based forms or pages to provide certain customer interaction mechanism in addition to having a fully functional navigation tool at his disposal, i.e. the agent can manipulate the client's computer over the Internet.” The Applicant



searched Bednarek and can find no reference to the words “web form”, “embed controls”, or “navigation.”

Accordingly, claim 12 is allowable for at least the reason that the cited references do not teach or disclose the method of claim 1 wherein the sales associate has the capability to manipulate the customer’s navigation on the Internet, as recited in claim 12. Claim 12 is also allowable for at least the reason that it depends from allowable claim 1.

**Dependent Claim 16**

To support a rejection of claim 16 as obvious, the Office Action states:

As per claim 16, Szlam, does not disclose that some of the sales information is obtained from a third party. Walker discloses that some of the sales information is obtained from a third party, further discloses that the sales information provided to the agent is enterprise (business) rule dependent based upon the type of model desired and the situation (cols. 21, lines 1-11). Therefore, it would have been obvious to one of ordinary skill in the art to have utilized information obtained from the some of the sale information obtained from the third party with the 'sales agent ms disclosed in Bednarek in Szlam, as it is an enterprise business decision based upon business rules as taught in Bednarek. (Emphasis added).

Walker is not asserted as a reference in the Office Action, and so the Applicant will assume that the Examiner is referencing U.S.P.N. 5,794,207 to Walker (hereinafter “Walker”), which was cited in an Information Disclosure Statement submitted by the Applicant on August 23, 2002. Walker at column 21, lines 1-11 discloses:

At step 1330, central controller 200 establishes buyer account 297 which either stores money transferred by the buyer or serves as a pointer to an account of the buyer outside the system. For buyers using credit cards, for example, buyer account 297 contains the credit card number, expiration date, and name of issuing institution. Buyers could also transfer money to central controller 200 to be stored in buyer account 297, which would operate like a conventional checking account. Central controller 200 would send a check to the seller written on buyer account 297.

The above-cited language discloses a buyer and a buyer account, which does not disclose the method of claim 1 wherein some of the sales information is obtained from a third party. Accordingly, the Applicant respectfully asserts that claim 16 is allowable over the cited references. Claim 16 is also allowable for at least the reason that it depends from allowable claim 1.

**Dependent Claim 18**

To support a rejection of claim 18, the Office Action states:

As per claim 18, Szlam does not teach that the sales information provided to the sales associate is associated with the results of a previous sales opportunity and there is a dynamic re-ranking of the aggregate sales information in terms of selling effectiveness which is incorporated in the sales information provided to a next sales associate presented with a similar opportunity. Bednarek teaches providing sales information to a sales associates associated with the results of a previous sales opportunity and there is a dynamic re-ranking of a previous sales opportunity in terms of selling effectiveness provided to the next sales associates incorporated into the sales information so that the interaction with the client can lead to a more productive interaction, i.e. a purchase (col. 32). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the sales information associated with the results of a previous sales opportunity of Beck into the method of Szlam/Bednarek for the explicit reasons set forth in Bednarek.

Column 32 of Bednarek, which is not reproduced here because of its length, discloses storing merchant information in a database and personal communication devices, such as a smart card. Column 32 of Bednarek, however, plainly does not teach or disclose the method of claim 1 wherein the sales information provided to the sales associate is associated with the results of a previous sales opportunity and the association produces a dynamic re-ranking of the aggregate sales information available in terms of selling effectiveness, and results of the re-ranking are automatically incorporated into the sales information provided to a next sales associate presented with a similar sales opportunity, as recited in claim 18. Accordingly, the Applicant respectfully

asserts that claim 18 is allowable for at least the reason that the cited references do not disclose every element of claim 18, and for at least the reason that claim 18 depends from claim 1.

**Dependent Claims 2, 5, and 13**

Claims 2, 5, and 13 each depend from claim 1 and so are allowable for at least the reason that each depends from an allowable independent claim.

**Independent Claim 65**

The Applicant respectfully asserts that claim 65 is allowable for at least the reasons given for the allowability of claims 1 and 3.

**Independent Claim 66**

The Applicant respectfully asserts that claim 66 is allowable for at least the reasons given for the allowability of claims 1 and 4.

**Independent Claim 67**

The Applicant respectfully asserts that claim 67 is allowable for at least the reasons given for the allowability of claims 1 and 8.

**Independent Claim 68**

The Office Action rejects independent claim 68 as obvious over Szlam in view of Bednarek. Claim 68 adds to the subject matter of claim 1 the steps of:

notifying the determined best sales associates that a sales opportunity regarding the customer exists;  
enabling each best sales associate to determine whether or not they wish to assist the customer;  
matching the customer to the sales associate from among the determined best sales associates who first chooses to assist the customer; (Emphasis added).

In the *Response to Arguments* section of the Office Action, it is stated that:

Applicant argues that Szlam does not disclose “matching the customer to a list of the best sales associates, notifies the determined best sales associates, and enables the best sales associates to choose whether or not to assist the customer, i.e. the best sales associates get to ‘race’ to the assist the customer.” In response to Applicant’s arguments, the system of Szlam inherently discloses such features of the claimed invention because the disclosure of Szlam provides assistance to customer looking to purchase a product online. Based on the customer profile, a sales associate or expert is to contact the customer to provide assistance. In order to do that, the sales associate must be notified to contact the customer and he of course has to make a choice of whether or not to assist such customer. (Emphasis added).

The Applicant respectfully maintains that claim 68 is allowable over the cited references because Szlam does not expressly or inherently disclose the notifying, enabling, and matching steps as recited in claim 68. First, as stated by the Office Action, Szlam does not expressly disclose the notifying, enabling, and matching steps of claim 68.

Second, the Office Action has not satisfied the burden defined in M.P.E.P. § 2112 for a showing of inherency. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993); *In re Oelrich*, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

The Office Action does not satisfy its burden under M.P.E.P. § 2112 to show that the notifying, enabling, and matching steps of claim 68 are necessarily present in Szlam. Rather, the Office Action simply links conclusory statements, one after another, to support a conclusion of inherency:

In response to Applicant's arguments, the system of Szlam inherently discloses such features of the claimed invention because the disclose of Szlam. . . Based on the customer profile . . . In order to do that . . . and he of course has to make a choice of whether or not to assist such customer. (Emphasis added).

The Applicant respectfully asserts that reasoning above clearly fails to support a showing that the notifying, enabling, and matching steps of claim 68 are inherently disclosed by Szlam as required by M.P.E.P. § 2112. Further, such conclusory reasoning, if maintained, would clearly be the product of impermissible hindsight reconstruction and fail to properly consider the claimed invention as a whole. Accordingly, claim 68 is allowable for at least the reason that the cited references fail to disclose every element of claim 68. Claim 68 is also allowable for at least the reasons given for the allowability of claim 1.

#### **Independent Claim 69**

The Office Action rejects independent claim 69 as obvious over Szlam in view of Bednarek. Claim 69 generally recites the subject matter of claim 68, and further incorporates a "timeout" that ensures that at least one of the best determined sales associates will be chosen to help the customer.

The Applicant respectfully asserts that claim 69 is allowable for at least the reason that the cited references do not teach or disclose the method of claim 68 further comprising the step of if a predetermined amount of time has passed and none of the best sales associates choose to assist the customer, selecting one from among the best sales associates who must assist the customer, as recited in claim 69. Claim 69 is also allowable for the reasons given for the allowability of claim 1.

**Independent Claim 70**

The Office Action rejects independent claim 70 as obvious over Szlam in view of Bednarek. Claim 70 generally recites subject matter from claim 1 and adds the steps of:

operating a collateral materials database for use by sales associates, wherein collateral sales materials include digital documents, web pages, executable programs, images, audio or video files, and Uniform Resource Locators;

...

recommending collateral sales materials to the matched sales associate which may be helpful to the sales process.

To support a rejection of claim 70, the Office Action states:

Applicant further argues that Szlam does not disclose the operating and recommending steps of claim 70. In response to Applicant's arguments, Szlam discloses a database that is available to the sales associates in order to operate and recommend sales materials such as documents, images, URL, etc.

The Applicant respectfully traverses the rejection of claim 70 for several reasons. First, the Applicant has searched Szlam and can find nothing that discloses operating a collateral materials database for use by sales associates and recommending collateral sales materials to the matched sales associate, as recited in claim 70. Szlam at [0081] does disclose sending "hold information" to a customer to keep the attention of the customer while he/she is waiting for assistance, and the "hold information" can be a presentation sent to the customer about the company or the products at issue. The use of "hold information" in Szlam, however, does not teach or disclose operating a collateral materials database for use by sales associates and recommending collateral sales materials to the matched sales associate, as recited in claim 70. Accordingly, claim 70, when properly considered as a whole, is allowable for at least the reason that the cited references do not disclose every element of claim 70. Claim 70 is also allowable for at least the reasons given for the allowability of claim 1.

**CONCLUSION**

In view of the Remarks, the Applicant respectfully requests allowance of the pending claims. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

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